

**VERMONT WATER POLLUTION CONTROL PERMIT REGULATIONS**

13. PERMITS

13.1 Definitions.

As used in these regulations the following terms shall have the meanings indicated below unless a different meaning clearly appears from the context:

(a) The term "Act" means Title 10, Chapter 47 of the Vermont Statutes Annotated, as amended.

(b) The term "Agency" means the Vermont Agency of Environmental Conservation.

(c) The term "Federal Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(d) The term "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899.

(e) The term "EPA" means the U.S. Environmental Protection Agency.

(f) The term "Administrator" means the Administrator of EPA.

(g) The term "Regional Administrator" means the Regional Administrator of EPA, Region I.

(h) The term "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the Federal Act and includes the Vermont program after it has been approved by the Administrator pursuant to section 402 of the Federal Act.

(i) The term "incompatible substance" means any waste being discharged into a publicly owned treatment works which interferes with, passes through without treatment, or is otherwise incompatible with such works or would have a substantial adverse affect on such works or on water quality.

(j) The term "well" shall include any openings in the ground used as a means of discharging pollutants into the ground except for a dry hole not exceeding seven feet in depth which is constructed as, and used solely for, the gravity disposal of domestic sanitary waste.

(k) The term "application" means either (i) the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Federal Act) for application for a permit, including a Refuse Act application, or (ii) the forms prescribed by the Secretary for used in applying for issuance or renewal of a permit.

(l) The term "reporting form" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Federal Act) for reporting data and information pursuant to monitoring and other conditions of permits.

(m) The term "permit" means any permit or equivalent document or requirements issued by the Administrator, or, where appropriate, by the Secretary after enactment of the Federal Act to regulate the discharge of pollutants pursuant to section 402 of the Federal Act, including a discharge permit and a temporary pollution permit.

(n) The term "NPDES form" means any issued NPDES and any uniform national form developed for use in the NPDES and prescribed in regulations promulgated by the Administrator, including the Refuse Act application, the NPDES application and the NPDES reporting forms or equivalent forms prescribed by the Secretary.

(o) The term "Refuse Act application" means the application for a permit under the Refuse Act.

(p) The term "Refuse Act permit" means any permit issued under the Refuse Act.

(q) The definitions of the following terms contained in section 502 of the Federal Act shall be applicable to such terms as used in this part: (unless the context otherwise required) "interstate agency," "State," "municipality," "pollutant," "point source," "biological monitoring," and "industrial use" and "pollution."

(r) The definitions of the following terms contained in section 1251 of the Act shall be applicable to such terms as used in these regulations: (unless the context otherwise required: "discharge," "person," "waste," "waters," "effluent limitation," "schedule of compliance" and "Secretary."

(s) The term "treatment works" means any facility, method or system for the storage, treatment recycling, or reclamation of municipal sewage or industrial waste of a liquid nature, including waste in combined storm water and sanitary sewer systems.

(t) The term "national data bank" means a facility or system established or to be established by the Administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.

(u) The term "applicable water quality standards" means all water quality standards to which a discharge is subject under the Federal Act or the Act and which have been (1) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or 303(e) of

the Federal Act, or (2) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Federal Act.

(v) The term "applicable effluent standards and limitations" means all Vermont and Federal effluent standards and limitation to which a discharge is subject under the Act and the Federal Act including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(w) The term "minor discharge" means any discharge which (1) has a total volume of less than 50,000 gallons on every day of the year, (2) does not effect the waters of any other state, and (3) is not identified by the Secretary, the Regional Administrator or by the Administrator in regulations issued pursuant to section 307 (a) of the Federal Act as a discharge which is not a minor discharge. If there is a more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

(x) The term "discharge permit" means a permit issued pursuant to section 1263 of the Act for a discharge which will not reduce the quality of the receiving waters below the classification established for them and which will not violate any state or federal laws or regulations.

(y) The term "temporary pollution permit" means a permit issued pursuant to section 1265 of the Act for a discharge which is not eligible for a discharge permit.

13.2 Permit Application and Forms.

a. Requirements for Filing. Any person who is presently discharging any waste, substance or material into the waters of the state or a well or who is presently discharging any incompatible substance into a publicly owned treatment works who has not previously filed with EPA or the Agency a complete application with respect to such discharge shall file a complete application with the Agency. A permit previously issued by the Agency or its predecessor shall be revoked upon the happening of (i) the failure or refusal of the holder of such permit to apply for a permit hereunder within 60 days of being requested to do so by the Secretary or (ii) the issuance of a permit to such holder by the Agency.

b. Proposed Discharges. Any person who wishes to discharge any waste, substance or material into any waters of the state or who wishes to discharge any incompatible substance into any publicly owned treatment works shall file a complete application on the earlier of:

(1) at least 180 days in advance of the date on which it is desired to commence such discharge, or (2) sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the Federal Act, or with any applicable zoning or siting requirements established pursuant to section 208 (b) (2) (C) of the Federal Act, and any other applicable water quality standards and applicable effluent standards and limitations.

c. Requirement as to Completeness of Application. Any application submitted to the Secretary shall be promptly forwarded by the Secretary to the Regional Administrator. The Secretary shall not issue any permit on the basis of any application which the Regional Administrator has

identified as incomplete or otherwise deficient until the Secretary receives additional information to correct any deficiency to the satisfaction of the Secretary or of the Regional Administrator. The rights of the Regional Administrator under this regulation and the procedures for implementing such rights (including any waiver or partial waiver of such rights) may be set forth in a written agreement between the Secretary and the Regional Administrator.

d. Furnishing of Additional Information. Within sixty days following a request of the Secretary, a person who has filed an application shall furnish the Secretary with such additional information as may be necessary to insure that such application is complete or which may otherwise be necessary to enable the Secretary to issue a permit for such discharge.

e. Signatures. Any form submitted to the Secretary shall be signed as follows:

(1) In the case of corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, State, or other public facility, by either a principal executive officer, ranking elected official or other duly authorized employee.

13.3 Agency Processing of Completed Applications.

a. Determination as to Type of Permit. When an application for an existing discharge is found to be complete, the Secretary shall make determinations as to the type of permit to be issued. If the discharge will neither (i) reduce the quality of the receiving waters below the classification established for such waters nor (ii) violate any state or federal laws or regulation, then the application shall be determined to be an application for a discharge permit under section 1263 of the Act. Otherwise, the application shall be determined to be an application for a temporary pollution permit under section 1265 of the Act. Any such temporary pollution permit shall contain the additional conditions set forth in section 13.4(b) (3) of these regulations.

b. Formulation of Tentative Determination and Draft Permit.

(1) The Secretary shall formulate and prepare tentative determinations with respect to an application in advance of public notice of the proposed issuance or denial of a permit. Such tentative determinations shall state whether the permit is a discharge permit or a temporary pollution permit and shall include at least the following:

(a) A proposed determination to issue or deny a permit for the discharge described in the application; and,

(b) If the determination proposed in paragraph 1 of this section is to issue the permit, the following additional tentative determinations:

(i) Proposed effluent limitations, identified pursuant to sections 13.4(b) and (c) for those pollutants proposed to be limited;

(ii) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations, identified pursuant to section 13.4(d);

(iii) A proposed set of periodic pollution charges to be applied in the case of any temporary pollution permit; and

(iv) A brief description of any other proposed special conditions (other than those required in section 13.4 (e) which will have a significant impact upon the discharge described in the application.

(2) The Secretary shall organize the tentative determinations prepared pursuant to paragraph (1) of this section into a draft permit for the application.

c. Public Notice

(1) Public notice of every complete application for a permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit for the proposed discharge. Procedures for a circulation of public notice shall include at least the following:

(a) Notice shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:

(i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting near the entrance to the applicant's premises and in nearby places; and

(iii) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;

(b) Notice shall be mailed to any person or group upon request; and

(c) The Secretary shall add the name of any person or group upon request to a mailing list to receive copies of notices for all applications within Vermont or within a certain geographical area.

(2) The Secretary shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application. All written comments submitted during the 30-day comment period shall be retained by the Secretary and considered in the formulation of this final determinations with respect to the application. The period for comment may be extended at the discretion of the Secretary.

(3) The contents of public notice of applications for permits shall include at least the following:

(a) Name, address, phone number of the Agency;

(b) Name and address of each applicant;

(c) Brief description of each applicant's activities or operations which result in the discharge described in the application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;

(e) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;

(f) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (c) (2) of this section and any other means by which interested persons may influence or comment upon those determinations; and

(g) Address and phone number of Agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to section 13.3(b), request a copy of the fact sheet described in section 13.3(d) and inspect any copy forms and related documents.

d. Fact Sheets

(1) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the Secretary shall prepare and, following public notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharge described in the application which includes at least the following:

(i) The rate of frequency of the proposed discharge;

if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(ii) For thermal discharges subject to limitation under the Act or the Federal Act, the average summer and winter temperatures in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306, 307 of the Federal Act and regulations published thereunder;

(2) The tentative determinations required under section 13.3(b);

(3) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to proposed discharge; and

(4) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(i) The 30-day comment period required by 13.3 (b) (2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(5) The Secretary shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. The Secretary may charge a reasonable fee for copies of fact sheets, draft permits and other documents.

e. Notice of Other Government Agencies.

The Secretary shall notify other appropriate Government agencies of each complete application for a permit and shall provide such agencies an opportunity to submit their written views and recommendations. Procedures for such notification shall include the following:

(1) At the time of issuance of public notice pursuant to section 13.3(c) transmission of such notice and, in cases where a fact sheet is required to be prepared, a fact sheet to any other States whose waters may be affected by the issuance of a permit and, upon request, providing such States with a copy of the application and a copy of the proposed permit prepared pursuant to section 13.3 (b). Each affected State shall be afforded an opportunity to submit written recommendations to the Secretary and to the Regional Administrator which the Secretary may incorporate into the permit if issued. Should the Secretary fail to incorporate any written recommendations thus received, he shall provide to the affected State or States (and to the Regional Administrator) a written explanation of his reasons for failing to accept any of the written recommendations.

(2) A procedure, similar to paragraph (1) of this section, for notifying any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit.

(3) At the time of issuance of public notice pursuant to section 13.3(c), transmission of such notice and, where a fact sheet is required to be prepared, a fact sheet to the appropriate District Engineer of the Army Corps of Engineers of applications for discharges

(other than minor discharges) into navigable waters:

(a) The Secretary and the Corps of Engineers may enter into written agreements providing for (i) notice to the District Engineer of minor discharges, (ii) waiver by the Corps of Engineers of its right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof and (iii) any procedures for the transmission of forms, period for comment by the Corps of Engineers and for objections of the Corps of Engineers.

(b) A written copy of any agreements between the Agency and the Corps of Engineers shall be made available to the public for inspection and copying.

(4) A procedure for mailing copies of the public notice (or upon specific request, copies of fact sheets) for application for permits to any other Federal, Vermont or local agency, or any affected country, upon request, and providing such agencies an opportunity to respond, comment, or request a public hearing pursuant to section 13.3(c). Such agencies shall include at least the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Federal Act.

(5) Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act or the Federal Act with any applicable requirements of such public health agencies.

f. Public Access to Information.

(1) The Secretary shall insure that any forms (including the draft permit prepared pursuant to section 13.3(b) (2) of any public comment upon those forms pursuant to section 13.3(c) (2) shall be available to the public for inspection and copying. The Secretary, in his discretion may also make available to the public any other records, reports, plans, or information obtained by the Agency.

(2) The Secretary shall protect any information (other than effluent data) contained in such form, or other records, reports, or plans as confidential upon showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a form, the Secretary shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality pursuant to the agreement between EPA and the Agency described in section 13.2(c).

(3) Any information accorded confidential status, whether or not contained in a form, shall be disclosed, upon request, to the Regional Administrator, or his authorized representative.

(4) The Secretary shall provide facilities for the inspection of information relating to forms and shall insure that Agency employees honor requests for such inspection promptly without undue requirements or restrictions. The Secretary shall either (a) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (b) otherwise provide for or

coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.

g. Public Hearings

The Secretary shall provide an opportunity for the applicant, any affected Vermont Agency, any affected interstate agency, any affected country, the Regional Administrator, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to applications. Any such request or petition for public hearing shall be filed within the 30-day period prescribed in section 13.3(c)(2) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The Secretary shall hold a hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Secretary, and may, as appropriate, consider related groups of permit applications.

h. Public Notice of Public Hearings.

(1) Public notice of any hearing held pursuant to section 13.3(g) above shall be circulated at least as widely as was the notice of the application. Procedures for the circulation of public notice for hearings held under section 13.3(g) shall include at least the following:

- (a) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and Government agencies which received a copy of the notice or the fact sheet for the application;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least thirty (30) days in advance of the hearing.

(2) The contents of public notice of any hearing held pursuant to section 13.3(g) shall include at least the following:

(a) Name, address, and phone number of the Agency;

(b) Name, address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each application, including identification number and date of issuance;

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A concise statement of the issues raised by the persons requesting the hearing;

(h) Address and phone number of Agency premises at which interested persons may obtain further information, request a copy of each draft permit prepared pursuant to section 13.3(b)

(2) above, request a copy of each fact sheet prepared pursuant to section 13.3(d) and inspect and copy forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

13.3i PROCEDURE FOR PUBLIC HEARINGS

(1) Except as provided in paragraph (4) of this section, where the Secretary finds a significant degree of public interest in a proposed permit or group of permits, he shall hold a public hearing to consider such permit or permits. Public notice of such hearing shall be given in a manner specified in subsection (h) of this rule.

(2) Hearings held pursuant to this section shall be conducted by the Secretary of his designee.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed permit. The Secretary shall have discretion to fix reasonable limits on the time allowed for oral statements and may require the submission of statements in writing.

(4) If the Secretary determines the useful information and data may be obtained thereby, the Secretary may hold a public hearing anytime prior to the issuance of the permit. Notice of a public hearing pursuant to this section shall be circulated 30 days prior to the hearing. The hearings shall be conducted in a manner set forth in paragraphs (2) and (3) of this section. All statements, comments and data presented at the hearing shall be retained by the Secretary and considered in the formulation of his determination. Where a public hearing is held pursuant to this paragraph, no public hearing is required pursuant to paragraph (1) above.

13.4 Terms and Conditions of Permits.

a. Prohibited Discharges. The Secretary shall not issue a permit authorizing any of the following discharges:

- (1) The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into navigable waters;
- (2) Any discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;
- (3) Any discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 403(d) of the Federal Act; and
- (4) Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Federal Act.

b. Application of State and Federal Requirements.

(1) The terms and conditions of each permit shall apply and insure compliance with all of the following, whenever applicable:

- (a) Effluent limitations under section 301 and 302 of the Federal Act;
- (b) Standards of performance for new sources under section 306 of the Federal Act;
- (c) Effluent standards, effluent prohibitions, and pretreatment standards under section 307 of the Federal Act;
- (d) Any more stringent limitation, including those
  - (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to Vermont

law or regulations (under authority preserved by section 510 of the Federal Act), or (ii) necessary to meet any other Federal law or regulation, or (iii) required to implement any applicable water quality standards, such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Federal Act and any regulations and guidelines issued pursuant thereto:

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Federal Act; and

(f) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307, such conditions as the Secretary determines are necessary to carry out the provisions of the Federal Act;

(g) If the permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(2) In any case where a permit applies the effluent standards and limitations described in subparagraphs (a), (b), (c) and (f) of paragraph (1) of this section, the Secretary must state that the discharge authorized by the permit will not violate applicable water

quality standards and, if the Secretary deems it necessary, shall prepare some explicit verification of that statement. In any case where applicable water quality standards require a permit to contain effluent limitations more stringent than those described in subparagraphs (a), (b), (c) or (f) of paragraph 1 of this section, a waste load allocation must be prepared where the Secretary deems necessary in order to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

(3) In addition to the terms and conditions of permits required elsewhere by these regulations, a temporary pollution permit shall also: (a) be for a fixed term, not to exceed five years, which is determined by the Secretary to be the shortest period of time necessary for the permittee to construct and place in operation the treatment facility, system or method necessary to qualify the permittee for a discharge permit, and (b) require the payment of the periodic pollution charges as provided in section 1265(d)(5) of the Act.

c. Effluent Limitations in Issued Permits.

In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to section 13.4(b) the Secretary shall, for each issued permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The Secretary may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentrated limits, for the level of

pollutants in the authorized discharge. Effluent limitations for multiproduct operations shall provide appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

d. Schedules of Compliance in Issued Permits.

In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to section 13.4(b) the Secretary shall follow the following procedures in setting schedules in permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

(1) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in sections 13.4(b) (1) the permittee shall be required to take specific steps to achieve compliance with the following:

(a) In accordance with any legally applicable schedule of compliance contained in:

- (i) Applicable effluent standards and limitations;
- (ii) If more stringent, water quality standards; or,
- (iii) If more stringent, legally applicable requirements listed in sections 13.4(b) (1).

(b) In the absence of any legally applicable schedule of

compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act and the Federal Act.

(2) In any case where the period of time for compliance specified in paragraph (1) of this section exceeds 9 months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than 9 months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than 9 months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirements. For each permit schedule of compliance, interim dates and final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.

(3) Either before or up to fourteen (14) days following each interim date and the final date of the compliance the permittee shall provide the Secretary with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) On the last day of the months of February, May, August, and November the Secretary shall transmit to the Regional Administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement (as required pursuant to paragraph (2) of this section.) Such list shall be available to the public for

inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(a) Name and address of each noncomplying permittee;

(b) A short description of each instance of non-compliance (e.g., failure to submit preliminary plans, 2 week delay in commencement of construction of treatment facility; failure to notify the Secretary of compliance with interim requirement to complete construction by June 30th, etc.);

(c) A short description of any actions or proposed actions by the permittee or the Secretary to comply or enforce compliance with the interim or final requirement; and

(d) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from a Vermont agency).

(5) If a permittee fails or refuses to comply with an interim or final requirement in a permit such noncompliance shall constitute a violation of the permit for which the Secretary may modify, suspend or revoke the permit or take direct enforcement action.

e. Other Terms and Conditions of Issued Permits.

In addition to the other requirements of these regulations the Secretary shall insure that the terms and conditions of each issued permit provide for and insure the following:

(1) That all discharges authorized by the permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications

which result in new or increased discharges of pollutants must be reported by submission of a new application or, if such discharge does not violate effluent limitations specified in the permit, by submission to the Secretary of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

(2) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

- (a) Violation of any terms or conditions of the permit;
- (b) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and,
- (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(3) That the permittee shall permit the Secretary or his authorized representative or the Regional Administrator or his authorized representative upon the presentation of his credentials:

- (a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;
- (b) To have access to and copy any records required to be kept under terms and conditions of the permit;
- (c) To inspect any monitoring equipment or method required in the permit; or

(d) To sample any discharge of pollutants.

(4) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the Secretary of the following:

(a) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Federal Act if such source were discharging pollutants;

(b) Except as to such categories and classes of point sources or discharges specified by the Secretary, any new introducing of pollutants into such treatment works from a source which would be subject to section 301 of the Federal Act if such source were discharging pollutants; and,

(c) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on (i) the quality and quantity of effluent to be introduced into such treatment works and (ii) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

(5) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of section 204(b), 307 and 308 of the Federal Act. As a means of

insuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of the Federal Act, and shall forward a copy to the Secretary, periodic notice (over intervals not to exceed 9 months) of progress towards full compliance with section 307 requirements.

(6) That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(7) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Federal Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Secretary shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

f. Transmittal of Proposed and Final Permits to Regional Administrator.

The Secretary shall transmit proposed and final permits to the Regional Administrator according to such procedures as the Secretary and the Regional Administrator shall agree upon in writing. Any such agreement may provide for the manner in which the Regional Administrator may exercise his rights to object to proposed permits pursuant to section 402(d)(2) of the Federal Act.

g. The Secretary shall transmit to the Regional Administrator a copy of every issued permit, immediately following issuance, along with

any and all term, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

13.5 Duration and Review of Permits.

a. Duration of Issued Permits.

Any issued permit shall have a fixed term not to exceed five years.

b. Reissuance of Permits.

(1) Any permittee who wishes to continue to discharge after the expiration date of his permit must file an application for reissuance of his permit at least 180 days prior to its expiration.

(2) The scope and manner of any review of an application for reissuance of a permit shall insure at least the following:

(a) That the permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expired permit;

(b) That the Secretary has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents and frequency of permittee's discharge either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the Secretary by the permittee; and,

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in section 13.4(b) including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards,

or other legally applicable requirements during the term of the permit.

(3) The Secretary shall follow the notice and public participation procedures specified in section 13.3 in connection with each request for reissuance of a permit.

(4) Notwithstanding any other provision in these regulations, any point source the construction of which is commenced after October 18, 1972 which is so constructed as to meet all applicable standards of performance pursuant to section 306 of the Federal Act shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954 whichever period ends first.

#### 13.6 Monitoring, Recording, and Reporting.

##### a. Monitoring.

(1) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the Secretary, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(2) Any discharge authorized by a permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307 (a) of the Federal Act, shall be monitored

by the permittee for at least the following:

- (i) Flow (in gallons per day); and,
- (ii) All of the following pollutants:
  - (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
  - (b) Pollutants which the Secretary finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
  - (c) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and,
  - (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

(3) Each effluent flow or pollutant required to be monitored pursuant to paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

b. Recording of Monitoring Activities and Results.

(1) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his permit;

(2) Any records of monitoring activities and results shall include for all samples: (a) the date, exact place, and time of sampling; (b) the dates analyses were performed; (c) who performed the analyses; (d) the analytical techniques/methods used; and (e) the results of such analyses; and,

(3) The permittee shall be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Secretary or Regional Administrator.

c. Reporting of Monitoring Results.

The Secretary shall require periodic reporting (at a frequency of not less than once per year) on the proper reporting form of monitoring results obtained by a permittee pursuant to monitoring requirements in permit. In addition to the reporting form, the Secretary in his discretion may require submission of such other information regarding monitoring results as he determines to be necessary.

d. Monitoring, Recording, and Reporting Requirements.

The Secretary shall adopt procedures consistent with any national monitoring, recording, and reporting requirements specified by the Administrator in regulations issued pursuant to the Federal Act.

13.7 Emergency Pollution Permits.

a. Requirements for Application. In the event that a person to

whom a discharge permit has been issued finds that pollution abatement facilities require repairs, replacement or other corrective action in order for them to meet standards specified in such discharge permit, such person may make application in the manner specified by the Secretary for an emergency modification of such discharge permit.

b. Secretary's Authority to Revise or Modify Discharge Permits; Imposition of Additional Requirements.

The Secretary may temporarily revise or modify any requirement of such permit that the pollution abatement facilities be operational in order to provide a sufficient period of time for the permittee to effect the repairs, replacements or other corrective action described in (a) above. The Secretary shall impose such additional requirements, terms and conditions in a discharge permit in connection with such modification or revision as are necessary to minimize the discharge of wastes to the waters of the state or to otherwise protect the waters of the state.

c. Emergency Pollution Permits. Action by the Secretary under this section shall be deemed to be equivalent to the issuance of an emergency pollution permit under section 1265(f) of the Act.

d. Public Notice; Notice to Regional Administrator. If the nature of the emergency cited as grounds for a revision or modification will not provide sufficient time to give public notice of an intent to revise or modify a permit and to provide opportunity for public hearing on such proposed action, the Secretary may revise or modify the permit without such public notice and opportunity for public hearing, provided that such public notice is distributed as soon as possible after the effective date of the revision or modification (but in no event later than 5 days thereafter) and opportunity for a public hearing is provided in the

manner set forth in sections 13.4(g) and (h). Any such revision or modification shall be subject to cancellation if the Regional Administrator objects to such revision or modification within 30 days following receipt of such public notice. All revisions or modifications pursuant to this section during the period ending 30 days prior to the transmission of such list shall be included in the list prepared by the Secretary pursuant to section 13.4(d)(4).

e. Other Conditions to Modifications or Revisions of Discharge Permits.

No revision or modification under this section shall be made unless the permittee certifies that the Secretary finds that:

(1) There is no present, reasonable alternative means of disposing of the waste other than by discharging it into the waters of the state during the limited period of time of the emergency;

(2) The denial of an emergency pollution permit would work an extreme hardship upon the applicant;

(3) The granting of an emergency pollution permit will result in some public benefit;

(4) The discharge will not be unreasonably destructive to the quality of the receiving waters; and

(5) The cause or reason for the emergency is not due to willful or intended acts or omissions of the applicant or any event or condition over which the permittee has control.

13.8 Modification, Revocation and Suspension of Permits.

After notice and opportunity for a public hearing, any permit issued hereunder can be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the causes listed in section 13.4(e)(2) or for failure or refusal of the permittee to carry out

requirements of Section 13.4(c)(3).

13.9 Control of Disposal of Pollutants into Wells.

(a) If an applicant for a permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the Secretary shall specify additional terms and conditions in the final permit which shall (1) prohibit the proposed disposal, or (2) control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare.

(b) Any permit issued for the disposal of pollutants into wells shall be issued in accordance with the procedures and requirements specified in these regulations.

(c) The Secretary shall utilize in his preparation of any permits proposed to be issued by him for the disposal of pollutants into wells, any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Federal Act or in directives issued to EPA regional offices.

13.10 Municipal Responsibility for Private Discharges of Domestic Wastes.

In addition to its other responsibilities under the Act, the Federal Act and the regulations, a municipality shall be responsible for the compliance with all requirements established under Vermont and Federal law by all new or increased discharges of domestic waste originating within its jurisdiction from community type waste treatment and disposal facilities after the date of adoption of these regulations. Prior to issuing a permit for any such discharge of such waste originating within a particular municipality, the Secretary may require the discharger to have made appropriate arrangements, by contract or otherwise, for the proper operation and maintenance

of any facilities to treat such discharge, which may include arrangements for the municipality to operate and maintain such facilities. In such cases, the Secretary may issue each permit to the municipality or to both the municipality and the owner of the facilities.

RULE 13.11 CERTIFICATION OF ACTIVITIES REQUIRING FEDERAL LICENSE OR PERMIT.

(a) Certifying Agent:

The certifying agent shall be the commissioner of the department of water resources.

(b) Application for Certification

Application for certification pursuant to section 401 of PL 92-500 or any amendments thereto shall be made to the commissioner of the department of water resources, agency of environmental conservation. The application shall contain information sufficient to determine that any discharge will comply with the applicable provisions of section 301, 302, 306, and 307 of PL 92-500, and, as minimum requirements, shall include a description of the location, manner, volume, nature, frequency and duration of the discharge and such additional information deemed necessary by the commissioner.

(c) Public Notice:

The commissioner shall give notice of an application for certification in the manner as provided in Rule 13.3 c.

(d) Public Hearings:

Public hearings with respect to applications for certification shall be governed by Rule 13.3 g.

(e) Notice of Public Hearings:

Public notice of any hearing to be held with respect to any application for certification shall be governed by the provisions of Rule 13.3 h.

(f) Procedure for Public Hearings:

Procedure for public hearings with respect to an application for certification shall be conducted according to the provisions of Rule 13.3i (2) and (3).

(g) Content of Certification:

(1) Name and address of applicant.

(2) A statement that the certifying agency has either (i) examined the application made by the applicant to the licensing or permitting agency (specifically identifying the number or code affixed to each application) and bases of its certification upon an evaluation of the information contained in such application which is relevant to water quality considerations, or (ii) examined other information furnished by the applicant sufficient to permit the certifying agency to make the statement described in subparagraph (3) of this paragraph;

(3) A statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(4) A statement of any conditions which the certifying agency deems necessary or desirable with respect to the discharge or the activity; and,

(5) Such other information as the certifying agency may determine to be appropriate.

(6) The certifying agency may modify the certification in such manner as may be agreed upon by the certifying agency and the regional administration (EPA).